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MARIPOSA COUNTY RESOLUTION NO. 81-33

A RESOLUTION SUPPORTING LEGISLATION TO ABOLISH THE DOCTRINE  
OF JOINT AND SEVERAL LIABILITY

WHEREAS the County of Mariposa through its Board of Supervisors is abhorred by the injustice of unwanted expense to taxpayers throughout California and in Mariposa County resulting from the rule of joint and several tort liability; and

WHEREAS this unfair rule has encouraged lawsuits involving public entities in countless cases statewide solely for the purpose of seeking access to the so-called "deep pocket" of the taxpayers of California and her city and county governments; and

WHEREAS the taxpayers of public entities in California have expressed in unmistakable terms their outrage at unjust and unwarranted expenditures of public funds originating from their taxes from which no benefit to the taxpayers as a body is derived; and

WHEREAS this problem has been recognized in editorials and in proposed legislation;

NOW THEREFORE it is resolved by the Board of Supervisors of Mariposa County, a political subdivision of the State of California, as follows:

1. The County of Mariposa supports the editorial position expressed by the Sacramento Bee on January 27, 1981, on this serious problem, a copy of which is attached hereto for reference;

2. The County of Mariposa supports AB 86-McAlister, legislation intended to remedy the disastrous results of the joint and several liability rule and such other legislation as may effectively limit or eliminate this unjust tort doctrine;

1           3.    The County of Mariposa also supports AB 139-Stirling,  
2 intended to remedy other injustices created by court decision  
3 in California and impacting on public officers in the per-  
4 formance of their duty;

5           4.    Copies of this Resolution shall be sent to legislative  
6 representatives of Mariposa County citizens and taxpayers,  
7 and such other persons as the Board may deem appropriate to  
8 encourage the purposes stated herein.

9           PASSED AND ADOPTED this 17th day of February, 1981,  
10 by the Board of Supervisors of Mariposa County, by the following  
11 vote:

12           AYES:            Taber, Clark, Erickson, Dalton, Moffitt


13           NOES:             None

14           ABSENT:          None

15           ABSTAINED:       None

16   
17 WILLIAM H. MOFFITT, Chairman  
Board of Supervisors

18 ATTEST:

19   
20 ELLEN BRONSON, County Clerk and  
Ex Officio Clerk of the Board

21 APPROVED AS TO FORM AND  
22 LEGAL SUFFICIENCY:

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24 RICHARD K. DENHALTER, County Counsel  
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# Suing The Government

In Pasadena, the city was held liable for an accident caused by a speeding car that Pasadena police were pursuing. In Glendale, the existence of a hill was found to be a "dangerous condition causing injury," for which the city was held responsible when a motorcyclist crashed into a car at the crest of the hill. In Los Angeles, when a drunken driver plowed through a median and hit an oncoming car, the state Transportation Department was held liable — for not having built a barrier.

With these kinds of legal precedents, "it has just about gotten to the point," as one legislative staffer said, "that a lawyer could be sued for malpractice if he didn't name a government agency as defendant in just about every damage suit he filed." Thousands of such suits against the state and local governments are filed and won every year.

No one knows the cost to the taxpayers of all this litigation. The state, 58 counties, 426 cities and several thousand special districts each pays its own liability claims, legal and administrative costs, and often insurance premiums as well. No one in or out of government collects data from all of them. Asked to estimate the total spent in California on "government tort liability," one county official guessed \$1 billion a year; a Caltrans official ventured \$100 million. A state insurance official just said, "It's enormous."

With so much money being paid out and with the state and local governments in such dire fiscal straits, it is unconscionable that no one is collecting statewide information about the causes of the enormous recent increases in claims filed and awards made — or even about the amounts involved. Buried in thousands of different budgets, the problem doesn't even get noticed, much less dissected and solved.

Even without adequate data, however, it's clear that basic changes are needed in the state's insurance and liability systems themselves.

Among the most frequent claims against government agencies are auto accident claims, about half of which, according to one Caltrans official, seem to be filed because the victims can't recoup their expenses from the uninsured or underinsured motorists responsible for the accidents. California's minimum standards for auto insurance are woefully out of date. Thus, between 1977 and 1979 close to \$500 million in "road condition" claims were filed against California counties alone; in 1979-80, more than \$1 billion in claims were filed against Caltrans.

Only a small portion of these claims will actually be awarded. Still it seems likely that if California merely required drivers to carry adequate auto insurance, government liability expenses would drop significantly. If California adopted a no-fault insurance system, with a high payment threshold, the cost reduction could be dramatic, particularly since so much of the government cost seems to be for litigation.

Without such reforms, the taxpayers are becoming everyone's insurer of last resort. Once found even partially responsible for an injury, they can be forced to pay the full amount the court awards the victim because of a law that makes all responsible parties "jointly and severally" liable for the entire sum awarded.

For example, in a Los Angeles case in which a car missed a curve and crashed, a jury awarded \$1.7 million to a severely injured passenger, allocating 70 percent of the blame to the driver, who had been drinking, and 30 percent to the county of Los Angeles, which had failed to replace a curve warning sign. The county being "severally" responsible and the driver being inadequately insured, Los Angeles taxpayers will pay out the full \$1.7 million. And the same would be true if — as has happened in other cases — the government had only been found 5 percent or 10 percent responsible.

No one knows the number of overpayments that have resulted from the "joint and several" rule, but it is beyond question that the rule has increased the number of suits brought against the state and local governments. It very likely has also influenced the out-of-court settlements government attorneys are willing to make. Nonetheless, efforts to change the "joint and several" law have failed in the Legislature.

In an increasingly litigious society, with increasingly generous notions of what injuries deserve compensation, the cost of government liability and liability litigation can only grow. If the response of legislators and taxpayers is merely to call for across-the-board belt-tightening and hiring freezes, the cost is likely to mount even faster. A fixed legal staff, after all, can only handle a growing caseload by contesting fewer claims and giving less attention to each case it does take to court.

The only way to keep government tort liability from getting out of hand is, first, to know the dimensions of the problem, and then to reform the system of laws that has created it. It is a task long overdue.